UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA :

- v. - : S1 16 Cr. 351 (LTS)

DAVID HOBSON, :

Defendant.

- -x

GOVERNMENT'S SENTENCING MEMORANDUM

PREET BHARARA
United States Attorney
Southern District of New York
Attorney for the United States of America

Aimee Hector
Rebecca Mermelstein
Assistant United States Attorneys
Of Counsel

The Government respectfully submits this memorandum in connection with the sentencing of the defendant, David Hobson, scheduled for March 15, 2017. For the reasons discussed below, the Government submits that a sentence within the sentencing range provided by the United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") would be sufficient, but not greater than necessary, to comply with the purposes set forth in Title 18, United States Code, Section 3553(a)(2). *See* 18 U.S.C. § 3553(a).

BACKGROUND

A. The Indictment and Arrest

On June 1, 2016, a grand jury sitting in this District returned Indictment S1 16 Cr. 351 (LTS) (the "Indictment") against Hobson charging him with the following offenses in connection with his participation in a scheme to commit insider trading: conspiracy to commit securities fraud, in violation of Title 18, United States Code, Section 371 (Count One); conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 371 (Count Two); and two counts of securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2 (Counts Three and Four). The defendant was arrested on June 3, 2016.

B. The Underlying Conduct

Hobson spent most of his professional career as an investment adviser in Providence, Rhode Island. As relevant to the criminal charges herein, Hobson was employed at the Royal Bank of Canada ("RBC") between 2002 and 2010, and later at Oppenheimer & Co. Inc. ("Oppenheimer"), from 2010 through May 2016. (PSR ¶ 90). Both firms had written policies forbidding employees from using material non-public information ("MNPI") to trade for their own personal benefit, or the benefit of others. One of his clients at both firms, co-defendant Maciocio, was a childhood acquaintance who grew into a friend during their young adulthood. Maciocio first became an investment advisory client of Hobson in the mid 1990s, and remained a client when Hobson transitioned from RBC to Oppenheimer. (PSR ¶¶ 15, 19-20).

From 1998 through 2014, Maciocio was an employee of Pfizer Inc. ("Pfizer"), a major pharmaceutical company. Maciocio held various professional titles during his tenure, but was principally employed in a planning and supply chain management capacity. Beginning in or about 2008, Maciocio's job responsibilities exposed him to information about potential corporate acquisitions being considered by Pfizer, as he was tasked with helping to evaluate how those acquisitions would impact manufacturing and supply demands. Notably, Maciocio was not provided with the true name of the acquisition target when he was consulted, as he was not officially part of the due diligence teams and consequently was shielded from the full details of such confidential information. Nonetheless, Maciocio was typically provided enough information to discern the true identity of the target on the basis of additional open source research. (PSR ¶¶ 14, 23).

Beginning in the Spring of 2008, when Maciocio's new job responsibilities caused him to be consulted on pending acquisitions, he shared that MNPI with his friend and investment adviser, Hobson. (PSR ¶ 27). On some occasions, Maciocio had identified the true name of the acquisition target prior to contacting Hobson. On other occasions, Hobson assisted Maciocio in his efforts to identify the true identity of the acquisition target based upon the limited information Maciocio was provided. Hobson then executed trades on the basis of the MNPI in brokerage accounts belonging to himself, Maciocio, and other clients for whom Hobson was the registered representative. This conduct continued for approximately six years, involved numerous companies, and only ceased when the source of the illegal trading profits dried up because Maciocio was terminated by Pfizer.

In total, Hobson personally reaped approximately $165,000 in unlawful trading profits, while his clients, including Maciocio, made approximately $220,000. (PSR ¶¶ 25-48).

For example, in or about February 2014, Pfizer began considering a potential acquisition of a company called Furiex Pharmaceuticals, Inc. ("Furiex"), which had recently disclosed positive results of clinical trials for a drug to treat irritable bowel syndrome. (PSR ¶¶ 41-42). On or about March 25, 2014, Maciocio was provided limited information regarding the deal – under the code name "Project Fusilli" – so that he could assist in evaluating certain manufacturing considerations relevant to the acquisition. (PSR ¶ 42). Maciocio was able to determine that the acquisition target was Furiex. Maciocio immediately contacted Hobson and relayed the information. (PSR ¶ 43). Starting that same day and continuing thereafter, Hobson purchased shares of Furiex for himself and certain of his clients, eventually owning 3,200 shares and 13 call option contracts in his own accounts and having bought 3800 shares for Maciocio and 2,315 shares and 5 call option contracts for his other clients. (PSR ¶¶ 43-44). On Saturday, April 26, 2014, Maciocio learned that Pfizer had abandoned the Furiex transaction. (PSR ¶ 45). Once again, Maciocio immediately tipped Hobson. (PSR ¶ 45). Nonetheless, prior to the market opening the following Monday, Furiex announced that it has been acquired by another pharmaceutical company and Furiex shares opened at a 28.5% increase over the prior trading day. (PSR 4¶ 6). That day, Hobson sold the entirety of his, Maciocio's, and his clients' holdings, realizing profits of $30,865.79, $40,883.71, and $40,323.19, respectively. (PSR ¶ 47).

C. Hobson's Plea and Applicable Sentencing Guidelines

On October 25, 2016, Hobson entered a plea of guilty to Counts One and Four of the Indictment in this case. The parties stipulated that under U.S.S.G. § 3D1.2(d), Hobson's offenses constitute a single group because the offense level is largely driven by the amount of gain or loss arising from the offense. Hobson's base offense level is eight, under U.S.S.G. § 2B1.4(a). Twelve levels are added, under U.S.S.G. § 2B1.1(b)(1)(G), because the gain from Hobson's offenses of conviction was between $250,000 and $550,000. Further, the parties agree that a three-level decrease is warranted under U.S.S.G. § 3E1.1 for Hobson's acceptance of responsibility. Thus, the parties agree that the applicable offense level is 17. The parties also agree that Hobson has no criminal history points, resulting in a Criminal History Category of I. Accordingly, at offense level of 17 and a Criminal History Category of I, the applicable Guidelines range is 24 to 30 months' imprisonment. (PSR ¶ 6).

The Probation Office ("Probation"), in its Presentence Investigation Report ("PSR"), has determined that an additional enhancement applies. Specifically, Probation has applied a two-level "abuse of trust" enhancement under U.S.S.G. § 2B1.4 because the defendant was a registered broker at the time of the offense. (PSR ¶ 57). The Government does not agree that such an enhancement is warranted by the facts of this case and, consistent with its plea agreement with Hobson, is not seeking application of this enhancement at sentencing.

DISCUSSION

A. The Applicable Law and Appropriate Sentence

The advisory Sentencing Guidelines promote the "basic aim" of Congress in enacting the Sentencing Reform Act, namely, "ensuring similar sentences for those who have committed similar crimes in similar ways." *United States* v. *Booker*, 543 U.S. 220, 252 (2005). Thus, the Guidelines are more than "a body of casual advice, to be consulted or overlooked at the whim of a sentencing judge." *United States* v. *Crosby*, 397 F.3d 103, 113 (2d Cir. 2005). The applicable Sentencing Guidelines range "will be a benchmark or a point of reference or departure" when considering a particular sentence to impose. *United States* v. *Rubenstein*, 403 F.3d 93, 98-99 (2d Cir. 2005). In furtherance of that goal, a sentencing court is required to "consider the Guidelines 'sentencing range established for . . . the applicable category of offense committed by the applicable category of defendant,' the pertinent Sentencing Commission policy statements, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims." *Booker*, 543 U.S. at 259-60 (citations omitted).

Along with the Guidelines, the other factors set forth in Section 3553(a) must be considered. Section 3553(a) directs the Court to impose a sentence "sufficient, but not greater than necessary" to comply with the purposes set forth in paragraph two. That sub-paragraph sets forth the purposes as:

> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> (B) to afford adequate deterrence to criminal conduct;
> (C) to protect the public from further crimes of the defendant; and
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. . . .

Section 3553(a) further directs the Court – in determining the particular sentence to impose – to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the statutory purposes noted above; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range as set forth in the Sentencing Guidelines; (5) the Sentencing Guidelines policy statements; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to any victims of the offense. *See* 18 U.S.C. ' 3553(a). The Second Circuit has instructed that district courts should engage in a three-step sentencing procedure. *See Crosby*, 397 F.3d at 103. First, the Court must determine the applicable Sentencing Guidelines range, and in so doing, "the sentencing judge will be entitled to find all of the facts that the Guidelines make relevant to the determination of a Guidelines sentence and all of the facts relevant to the determination of a non-Guidelines sentence." *Crosby*, 397 F.3d at 112. Second, the Court must consider whether a departure from that Guidelines range is appropriate. *Id*. Third, the Court must consider the Guidelines range, "along with all of the factors listed in section 3553(a)," and determine the sentence to impose, whether it be a Guidelines or non-Guidelines sentence. *Id.* at 113. In so doing, it is entirely proper for a judge to take into consideration his or her "own sense of what is a fair and just sentence under all the circumstances." *United States* v. *Jones*, 460 F.3d 191, 195 (2d Cir. 2006).

B. A Sentence Within the 24 to 30 Month Guidelines Range Is Sufficient But Not Greater Than Necessary to Serve the Purposes of Sentencing

A sentence within the Guidelines range or 24 to 30 months' imprisonment would be sufficient, but not greater than necessary to account for the seriousness of the offense, the history and characteristics of this defendant, and to provide just punishment and adequate deterrence for similar conduct.

Insider trading is a serious offense that undermines the public's confidence in fair and well-functioning capital markets. Hobson was well versed in the legal prohibition against trading on the basis of MNPI, having worked as an investment adviser for over a decade by the time he began engaging in this offense. Nonetheless, despite his clear knowledge that what he was doing was against the law and the policies of his employers, and the fact that he was otherwise earning a good salary and living an upper middle class life, he seized the opportunity to earn illegal profits for both himself and his clients virtually immediately after it was first presented to him. Moreover, his criminal conduct was far from an isolated or aberrant transgression. Rather, it spanned six years. Maciocio first began providing him with MNPI in 2008, and the arrangement continued up until 2014, ending only because Maciocio was terminated. Had Maciocio not lost access to the confidential and lucrative information concerning Pfizer's potential acquisition targets, there is no reason to believe this criminal scheme would have ceased then. Further, Hobson earned substantial unlawful profits from his criminal activities, not only for himself, but also in the accounts of numerous of his clients. A significant sentence is necessary to account for the seriousness of this repeated and longstanding offense, and to deter both Hobson and other individuals from capitalizing on illegal information advantages in the public securities markets.

FORFEITURE

Hobson has already consented to the entry of a forfeiture order against him and the Court has already entered the appropriate orders. Nonetheless, the Court is required, at sentencing, to orally pronounce the imposition of forfeiture, which in this case includes the forfeiture of a sum of money equal to $385,664.39, which represents all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses charged in Counts One and Four of the Indictment.[1]

[1] The Government is currently awaiting a response from counsel for Pfizer regarding whether they seek restitution in this matter.

CONCLUSION

For the reasons set forth above, the Government respectfully submits that Hobson has committed a serious offense that is appropriately penalized by a sentence within the range of 24 to 30 months' imprisonment. Such a sentence is sufficient but not greater than necessary to serve the legitimate purposes of sentencing.

Dated: New York, New York
March 8, 2017

Respectfully submitted,

PREET BHARARA
United States Attorney
Southern District of New York

By: *__/s/ Aimee Hector_______*
Aimee Hector
Rebecca Mermelstein
Assistant United States Attorneys
(212) 637-2203/2360

cc: Counsel of record (by email)

Certificate of Service **Filed Electronically**

The undersigned attorney, duly admitted to practice before this Court, hereby certifies that on the below date, he/she served or caused to be served the following document(s) in the manner indicated:

Government's Sentencing Memorandum

Service via email:

Michael Barrows, Esq.

Dated: New York, New York
March 8, 2017

Respectfully submitted,

PREET BHARARA
United States Attorney
Southern District of New York

By: *__/s/ Aimee Hector________*
Aimee Hector
Rebecca Mermelstein
Assistant United States Attorneys
(212) 637-2203/2360